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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,154	02/24/2004	Sidney T. Fails	21869.01	8285

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EXAMINER

HOOK, JAMES F

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 07/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/784,154

Applicant(s)

FAILS ET AL.

Examiner

James F. Hook

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2-24-04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 8, 11, 12, and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Mostala. The patent to Mostala discloses the recited pipe repair assembly comprising a pipe tool where the use of such for repair is considered merely intended use where such is capable of use in pipe repair applications as well, comprising a generally cylindrical main body 46 having a top and bottom surface at either end of the body, a generally cylindrical compressible alignment portion 64 having a bottom surface disposed against the top surface of the main body, a rigid compression plate 68, an elongate rod 60 going through the center of the main body, a fastener 74 in the form of a wing nut is rotatable, generally cylindrical coupling 52 can be placed over the plug and used to couple to one pipe to another, where the use of such without a bevel cut is merely intended use combined with the intended use to repair, where the apparatus claimed is capable of use with any type of connection, without requiring any cuts to the connector when such is a property of the plug being thin and entirely within the confines of the tube interior, a further washer 72 can also be

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provided to contact the lower end of the main body, and where the alignment portion is a rubber bushing.

Claims 1, 3, 5, and 6 are rejected under 35 U.S.C. 102(e) as being anticipated by Kobylinski. The patent to Kobylinski discloses the recited pipe repair tool comprising a cylindrical main body 24, a generally cylindrical compressible alignment portion 40, a rigid compression plate generally shown at 50, an elongate rod 8 passes through the main body, a fastener shown as a disk below plate 50 which is attached to the rod, and a rotatable fastener 14 in the form of a wing nut, where the use of such with a broken pipe is considered merely intended use, where rotation of the rotatable fastener compresses the compressible element to contact and seal the inside of the pipe, the alignment member is a rubber bushing, and the main body can be made of plastic material.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kobylinski in view of Mostala. The patent to Kobylinski discloses all of the recited structure with the exception of providing an extra flat washer. It would have been obvious to one skilled in the art to modify the rod of Kobylinski by providing an extra washer to contact

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the main body as suggested by Mostala where such would allow for a smoother turning surface for the rotatable fastener to reduce wear and save money in replacement costs.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kobylinski in view of Provost. The patent to Kobylinski discloses all of the recited structure with the exception of tapering the body portion. The patent to Provost discloses that it is old and well known in the art to provide a body portion 10 to contact the outlet of a pipe and guide a turning rod can be provided with a tapered body. It would have been obvious to one skilled in the art to modify the main body of Kobylinski by changing the shape of the main body as such is a mere choice of mechanical design as suggested by Provost which shows an alternative way to form the main body, where such would allow for easier use of the plug with other elements by allowing them to be placed over the main body more easily thereby saving time and money.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kobylinski in view of Echols. The patent to Kobylinski discloses all of the recited structure with the exception of forming the plastic body of UHMWPE. The patent to Echols discloses that it is old and well known in the art of pipe plugs to form plastic parts of various materials of which UHMWPE is one such plastic to withstand use in pipelines. It would have been obvious to one skilled in the art to modify the main body of Kobylinski by using a UHMWPE as the material for the main body as suggested by Echols where such would allow longer life thereby saving money where UHMWPE is known to be durable in pipe applications.

Claims 9, 10, 13, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mostala. The patent to Mostala discloses all of the recited structure with the exception of providing gaskets on the connection pipe, forming the main body of plastic, such as UHMWPE, and forming the top surface of the main body with a taper. Forming the body of any type of material is considered merely a choice of mechanical expedients where any material that is equally strong could be used, where UHMWPE is known to be a very strong plastic material used in the art to form plug like members, and it would have been obvious to one skilled in the art to modify the main body of Mostala to be formed of an material as such is merely a choice of mechanical expedients requiring only routine experimentation to arrive at optimum materials to be used in different environments where plastics are cheaper and lighter than most other materials. Providing the connection pipe with gaskets at the end is considered old and well known in the art to provide gaskets at the ends of connection pipes to further seal the pipe and it would have been obvious to one skilled in the art to provide gaskets on the connection pipe ends to insure a proper seal between the connection pipe and other pipes as such is old and well known in the art. With respect to the shape of the body such is merely a choice of mechanical design to change the shape of the body to be at least partially tapered as such is merely a choice of mechanical design where such would allow for easier insertion of the connection pipe over the plug thereby saving installation time and therefore money.

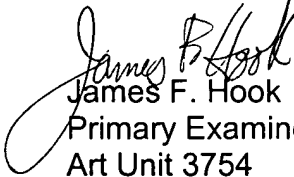
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Nicholson, Ficklin, Martino, Goforth, Condon, Larkin (668 and 881), and Tozer disclosing state of the art plugs.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (571) 272-4903. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


James F. Hook
Primary Examiner
Art Unit 3754

JFH